HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 52 of 2005.

1. State of Uttaranchal through Collector,
   Tehri Garhwal,
2. Tehri Hydro Development Corporation,
   Through its Chief Managing Director,
   Head Office Bhagirathi Puram, Tehri,
   District Tehri Garhwal. ----Appellants.

Versus

1. Smt. Sushila Devi Aggarwal
   W/o late Sri Bachan Lal Agarwal,
2. Sri Arvind Kumar Aggarwal,
3. Sri Arun Kumar Aggarwal,
   Sons of late Sri Bachan Lal Aggarwal,
4. Madan Lal Aggarwal,
5. Raman Lal Aggarwal
   sons of S/o late Sri Ramgopal Aggarwal,
   All r/o Suman Chawk Tehri,
   Tehri Garhwal. ----Respondents.

Sri U.P.S. Negi, learned Addl. Advocate General for the appellants,
Sri Rajendra Dobhal, learned counsel for the respondents.

Coram:-Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J.

P.C.:

This appeal u/s 54 of the Land Acquisition Act 1984 **(hereinafter referred to as the Act)** is directed against the judgment and decree dated 20.012.2001 passed by the District Judge, Tehri Garhwal in Land Acquisition Reference No. 11 & 13 of 1987 Bachan lal and others vs. State of Uttaranchal and another and to affirm the award dated 21.03.1987 passed by the Special Land Acquisition Officer (Irrigation-2), Tehri Dam Project, Tehri.

The facts, in brief, are that a Notification u/s 4(1) of the Act was published in the official gazette on 10.03.1984 to acquire 27,248 Sq. ft of land for construction of Tehri Dam to be constructed in village Tehri Twon, Tehsil Tehri, Pargana Chandrabadni ward no. 5. During the acquistiton proceedings the land and houses of the respondents were also acquired and the land Special Land Acquisition Officer, Tehri Garhwal, after perusing the evidence on record and hearing the objections vide order dated 21.03.1987 has determined the value of the entire land and house whichever existed there to the tune of Rs. 2,69,667.21/- as provided u/s 23 of the Act for.

Aggrieved with the award passed by the Special Land Acquisition Officer, the claimants/respondent preferred Land Acquisition Reference u/s 18 of the Act before the District Judge, Tehri Garhwal which was registered and numbered as Land Acqusition Reference Nos. 11 & 13 of 1987 claiming that they have not been paid compensation for their land and buildings of Khata no. 59, purchased by the predecessors of the claimants which has been in their possession since long. And if the Revenue Authorities have not recorded their names in the records in the settlement of 1918 and 1932, the claimants cannot be deprived of their proprietary right. The land is situated in main bazaar of the town. Para no. 426A of the Revenue Manual has been ignored. Similarly the examplars illustrating the higher rates were also overlooked in awarding the compensation. While assessing the price of the land to be acquired, the Tehri Dam Project has fixed the rates for Rs.150/- per Sq. ft. at New Tehri, thus the claimants have claimed compensation, at least, @ 50/- per sq. ft. for their land. The opposite parties have assessed the costs of the buildings at very low. The P.W.D. schedule of rates relied upon for valuation is

not representative of the rate of construction, material and labour charges prevailing in Tehri market. The awarded amount was not deposited in the Court as provided u/s 31 of the Act. On the contrary the opposite party declining the allegations made in the references have stated the ownership of the property was ascertained on the basis of relevant records; the valuation of the property was properly assessed; Janki Prasad S/o Bihari Lal was recorded as owner of Khata no. 59 and the award has been made on the basis of measurements and Land Revenue Manual thus the reference is not maintainable.

The District Judge, Tehri on the basis of the pleadings of both the parties, framed necessary issues. Thereafter, the claimants led their oral and documentary evidence. They filed 7 documents per list 350-a and examined Sri Bachal Lal Aggarwal as PW-1 and the also filed certified copy of the judgment in LAR no. 1/90 dated 14.07.95, while the opposite party did not lead and documentary or oral evidence. The learned District Judge did not find proper to settle the title of the claimants so far the claim of claimants in regard to the acquisition of the land of Khata No. 59 of ward no. 5 is concerned, he accordingly observed that the SKAO has not accepted the position and has not awarded the compensation as the land stood in the name of Janki Prasad in the settlement of 1932. Consequently, he did not give finding as to the ownership of the land Khata no. 59 claimed by the claimants. However, the learned District Judge observed that the claimants are the owners of the land measuring 1469 Sq. ft having building over Khata No. 11 of Ward no. 5 of Tehri Town. For 1469 Sq.ft. land, the learned District Judge assessed the value of the land @ 30/- per sq.ft. and fix the value of the buildings of the claimants at Rs. 2,15,000/-. Besides it, the claimants were found entitled to 30%

solatium, additional amount @ 12 per annum from the date of Notification u/s 4 (1) of the Act to the date of award, interest @ 9% per annum from the date of making reference and Rs. 12,000/- for shifting of 3 families with household goods and goods of the shop. Accordingly, the learned District Judge found the claimants entitled to a compensation of Rs. 5,47,133.41/-. As the claimants were already been paid Rs. 3,09,406.34/-, thus they were found entitled to a sum of Rs. 2,37,727.07/- as enhanced compensation for Khata No. 11, ward no. 5 of Tehri town. The opposite parties were granted two month's time to pay the enhanced compensation to the claimants. Aggrieved by the impugned award, the appellants have preferred this appeal on the ground that the amount of compensation was awarded in accordance with the market value and the price prevalent in the area within three years; the reference Court has committed illegality in enhancing the rate of acquired land from 5.55 per sq. ft. to Rs. 30/- per sq. ft.; the enhancement on the other counts is also erroneous.

We have heard Sri K.P. Upadhayay, learned Standing Counsel for the appellants as well as Sri Rajendra Dobhal, learned counsel for the respondents and perused the record carefully.

Undoubtedly, the land of the claimants/ respondents of Khata no. 11 in ward no. 5 of Tehri town measuring 1469 sq. ft. having building alongwith other land was acquired for the purpose of Tehri Dam accordingly a Notification u/s 4 (1) of the Act was issued on 10.03.1984. The total area, which was acquired by the Govt. vide the said Notification war 27,248 sq. ft.

Although, the learned District Judge left out observing that whether the claimants are the owners of the land of Khata no. 59 as claimed by them, however the claimants were found owners of 1469 Sq. ft. land have building over Khata no. 11 of Ward no. 5 of Tehri Town. The SLAO has assessed the value of the land @ 5.55 per sq ft., which is obviously very low and cannot be said to be justified as the claimants have produced oral and documentary evidence before the Reference Court in support of their claim while the opposite parties did not adduce any evidence in rebuttal. Therefore, the learned District Judge while distinguishing the common feature of the identical land for which the land was assessed @ Rs. 30/- per sq. ft. has assessed the compensation of Rs. 44,070/- @ 30/- per sq. ft. for the 149 sq. ft. land which does not call for any interference. Similarly, in assessing the building constructed over Khata no. 11, the learned District Judge come out to the conclusion that no measurement or valuation record of PWD in respect of the buildings of the petitioners on khata no. 11 have been produced by the opposite party not there was evidence of any expert witness on the point, consequently, seeming the market value to be proper the valuation of the buildings were assessed for a sum of Rs. 2,15,000/- as the claimants had their shops located in the building. Besides it the claimants were found entitled 30% solatium i.e. Rs. 77,721/- and additional amount @ 12% from the date of notification ie. Rs. 94,215.12/-. The learned District Judge enhanced the compensation and out rightly rejected the award of the Special Land Acquisition Officer. Consequently, the compensation awarded by the Special Land Acquistion Officer (Rs. 97,771.20 + 2,11,635.05= Rs. 3,09,406.79/-), in the prevailing circumstances, is quite ureasonable and inadequate. The SLAO has collectively assessed the value of the land and the buildings constructed over the acquired land and has

determined the value of the entire land and house whichever existed there for calculating the compensation, thus he committed manifest error in awarding the compensation.

For the identical purposes, a land measuring 860 sq. ft. as also the house of the owner, namely, Sri Lekhi Ram Semalti situated at Ward No. 2 Tehri Town, Old Tehri was also acquired by the respondents for construction of Tehri Dam in which the SLAO assessed the cost of the land @ Rs. 6/- per sq. ft. Besides it additional amount, solatium in regard to the land and house as also the cost of the trees was awarded as compensation to the owner. Challenging the award of SLAO, Sri Lekhi Ram preferred Land Acquisition Reference u/s 18 of the Act before the District Judge, Tehri Garhwal who by its order dated 01.08.1992 assessed the cost of the land @ Rs. 30/- per sq. ft and enhanced the compsensation in all counts. Aggrieved with the order of Reference Court enhancing the compensation, the State preferred Fist Appeal no. 560 of 2001 (old no. 658 of 1992) State of Uttar Pradesh vs. Sri Lekhi Ram Semalti before this Court, which was ultimately partly allowed by this Court on 9th August 2004 and this Court upheld the order of the Reference Court. In the present case the land, house and shops of the present respondents/claimants have been acquired for the similar purposes. The respondent/claimants had to abandon their immovable property and had to rehabilitate another place therefore, the order of the Reference Court is liable to be affirmed.

It was known to everyone that the Tehri town would have been submerged in water; therefore there could not have been any increase in the rate of land since 1983, therefore in view of the decision in Mehta Ravendra Rai Ajit Rai and ors. vs. State of

Gujrat, reported in AIR 1989 SC,2051, the agreement of sale 5 months after notification under section 4 could not be ignored.

The learned District Judge has enhanced the amount of compensation on the facts on record and on the evidence led by the claimants, after considering the rebuttal of the opposite parties, which was found to be vague and untenable. The appellants could not show any illegality or perversity in the judgment impugned, thus we are fully in agremment with the findings recorded by the learned District Judge. The Reference Court has rightly assessed the value of the acquired land and the building constructed over there. The order impugned order requires no interference by this Court and is hereby affirmed.

Accordingly, the appeal is dismissed. No order as to costs.

(M.M. Ghildiyal, J.) **(P.C. Verma, J.)**

September 22,2006:
NCM: